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RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
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SENSITIVE
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STATE FOR INL, EUR, L/LEI, INL/PC, INL/AEE;
JUSTICE FOR CRIMINAL DIVISION, OFFICE OF INTERNATIONAL
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KHLS
SUBJECT: DEMARCHE DELIVERED REGARDING U.S.-EU DATA
PROTECTION ISSUE AND HLCG

REF: SECSTATE 118592 (NOTAL)

¶1. (SBU) Following instructions in Reftel, on November 7, 2008, USEU Senior Justice Counsel spoke with Claire Rocheteau of the French Permanent Representation to the EU who serves as the chair of the EU side of the U.S.-EU High Level Contact Group (HLCG) experts. The USEU representative raised the U.S. concern that the Presidency's planned presentation at the Committee of Permanent Representatives (COREPER II) meeting on November 12 of a proposed EU- U.S. Ministerial Statement on data protection and law enforcement information sharing was premature as many points pending before the experts group had not yet been discussed. Ms. Rocheteau was gracious when she learned of our concern and said that this presentation in COREPER was intended to inform Ambassadors, in a positive way, of the proposed next step and not to seek decisions on details. She did, however, point to some basic differences the EU side had with the U.S. approach to this "political document."

¶2. (SBU) In the conversation, USEU Justice Counsel explained that the U.S. side had become concerned when we learned that the proposal for an interim solution (pending negotiation of a final international agreement on data protections/privacy) of an EU - U.S. Ministerial Statement would be taken before COREPER II November 12. The U.S. side feared that this was premature as many of the new points set out in the proposed drafts of the Statement had not yet been discussed by the HLCG experts. We further feared if this were a decisional matter before COREPER that avenues possible later agreement might be closed off before any discussion had been initiated.

¶3. (SBU) Ms. Rocheteau said she was appreciative of the contact relating our concern. Nevertheless the French Presidency (and EU Commission and Council representatives on the experts group) believed that the proposal for a Ministerial Statement needed to be presented before COREPER in order to get confirmation that would then allow the EU side to proceed. Doing so, she said, would also give force to their work. She conceded that it would have been preferable first to have discussed the differences in our drafts but that the fast approaching deadline of the December Ministerial (shortened further, as she noted, by the long time taken by the U.S. side in proffering its counter-draft) forced them to move in a "reverse manner" at this juncture. She repeatedly underlined the French Presidency's intention that this presentation to COREPER would be as positive as possible because they "absolutely" wanted to proceed with this interim Ministerial Statement and with the HLCG experts'

discussions.

¶4. (SBU) Ms. Rocheteau said that there were similarities and some differences between items in the EU draft and the U.S. counter-draft of the Statement. She noted that both the EU and the U.S. drafts had been distributed to COREPER on a "restreint" (no distribution) basis but that their COREPER presentation and discussion was not intended to go into details. She made clear that the EU envisioned the proposed Ministerial Statement as a "political" statement and that it should not take the form of a "legal obligation" or be read to solve any differences between the two sides in a final way as one might infer from the U.S. draft text. Their proposed departure point for the Ministerial Statement was the June 2008 Final Report of the HLCG. She said the presentation before COREPER would provide needed transparency to the HLCG process and would give the Presidency firm support against the constant challenges from the European Parliament and 27 Member State parliaments. Some EU members had criticized a lack of transparency about the HLCG's work.

¶5. (SBU) The USEU representative returned to the concern that COREPER might close off areas (or principles) that had not yet been discussed. Ms. Rocheteau replied this was not their intention and that she would add a briefing point for her Ambassador that there should be no decision on any matters not yet discussed in full (by the HLCG experts).

¶6. (SBU) COMMENT: Although the drafts are marked "restreint" (EU Confidential), HLCG-related internal documents have been leaked regularly to certain web sites in the past. The interagency should prepare our posts in the 27 EU member

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states with talking points in the event that differences in the U.S. and EU negotiating positions become a public issue.
END COMMENT.

Silverberg

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